

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5241 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANSANGBHAI SAGRAMBHAI SOLANKI

Versus

STATE OF GUJARAT  
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Appearance:

MR JA ADESHRA for Petitioner  
Ms. B.R. Gajjar, Ld.GOV'T PLEADER for Respondent No. 1  
MR HS MUNSHAW for Respondent No. 2, 4  
NOTICE SERVED for Respondent No. 3  
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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

The petitioner was working as a Primary Teacher in Ravi Nagar Prathamik Shala No.2. He was transferred

from the said institution by an order dated June 08,1990. It is alleged by the District Primary Education Officer Respondent No.2 that when the transfer order was proposed to be issued on the petitioner on 11-6-1990 he did not accept the same. On the contrary he rebuked the officers who intend to deliver the transfer order to the petitioner. Ultimately the petitioner accepted the order of transfer, he, however, denied the allegation that the petitioner refused to accept the transfer order dated 8-6-90 and he misbehaved with the officer, when the order was tendered to him. On this ground the District Primary Education Officer passed an order on 12th July 1990 suspending the petitioner from service. Having felt aggrieved by the order of suspension petitioner has filed the present petition, claiming relief for quashing suspension order passed by the District Primary Education Officer dated 12-7-1990 at Annexure-A. Petitioner also claimed interim relief for staying operation of the suspension order till the disposal of the petition. After filing the present writ petition, notice was issued. The respondent filed counter affidavit on 29-8-1990, and thereafter the interim matter was heard by this Court and the order has been passed on 1-10-1990.

2. I have gone through the order passed by this Court on the interim prayer dated 1-10-1990. It appears that while passing the interim order this Court has found that the petitioner has not committed any of the offences alleged in the suspension order. This Court was prima facie satisfied that, there is no reason for the respondents to allege that the petitioner refused to accept the transfer order. On the contrary this Court has held that as & when the transfer order was tendered to him, immediately he had accepted the same. This Court further held that the allegation that the petitioner has abused officers when they went to hand over transfer order to the petitioner is also not correct. Accordingly this Court by an order dated 1-10-1990 directed the respondents not to implement or execute or enforce the order of suspension issued by the District Primary Education Officer dated July 12, 1990 (Annexure-A).

3. It is submitted by learned counsel for the petitioner that the matter could have been finalised at that stage itself, as this Court had already found that the petitioner has not committed any misconduct either by non acceptance of transfer order , or this Court also not believed the allegation that the petitioner has abused officers when they went to hand over transfer order to him. The allegation on which the suspension order has been based is that the petitioner did not accept the

transfer order and he misbehaved with the officers when they went to deliver the same to the petitioner. Since both these allegations were disbelieved by this Court, I am of the view that the suspension order should not be allowed to stand any further. More over the suspension can be of two types, one having penal consequence and the other without any penal consequence. In the instant case the suspension order has been issued after making certain allegations against the petitioner and thereby the suspension order has been made to penalise the petitioner. Before proving the allegations, I am of the view that the petitioner should not have been suspended in the manner in which he has been suspended by the respondent District Primary Education Officer by his order dated 12-7-1990. On this ground also the order of suspension at Annexure-A is liable to be quashed.

4. Having regard to the order passed by this Court on 1-10-1990 and after considering the legal position, I am of the view that the order of suspension should not be allowed to stand, especially when this has been made to penalise the petitioner. Accordingly the order of suspension order dated 12-7-1990 issued by the District Primary Education Officer at Annexure-A is hereby quashed. Accordingly the petition is allowed. Rule is made absolute. However, I make no order as to costs.

Dt: 23-6-2000

( P.K. Sarkar, J )

/vgn.